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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Letters Patent Appeal No. 43 of 2007
with
Civil Application No.20 of 2007

M/s Siemens Limited ..Appellant

vs.

Siemens Workers Union ..Respondent

Shri C.J.Sawant Sr.Advocate with Shri V.P.Vaidya for appellant.

Shri C.U.Singh Sr.Advocate with Shri Sandeep S.Choubal for respondent.

CORAM: S.B.MHASE &
Smt.NISHITA MHATRE JJ.
6th March 2007

P.C.

1. Heard.

2. The respondent desires to hold election of the office bearers of the Union and, therefore, the Union has requested the employer Appellant to make the space available for holding election and cooperation from the employer. That was denied and, therefore, ULP complaint under item 9 of Schedule IV of M.R.T.U.and P.U.L.P.Act,1971 was filed by the respondents Union. In the said complaint, application U-2 was filed for interim order and the Industrial Court by order dated 16th January, 2007 allowed the application U-2

directing the complainant to hold elections as per the schedule without disturbing the manufacturing process of the appellant and to coordinate with the appellant at the time of holding elections. The said order was challenged by filing Writ Petition. The learned Single Judge having found that the matter pertains to the electionand that the elections are required to be conducted in view of the directions issued by the Industrial Court in a dispute between the Members of the Union, rejected the said writ petition by order dated 5th February, 2007. The said order is challenged by preferring the present L.P.A. It is to be noted that for the last 20 years elections were conducted in the premises of the employers with the assistence of the employers which is required for conducting the elections and thus by passage of time this is a privilege of the Union to hold elections. It is further to be noted that the Industrial Court has also while passing the order in favour of the complainants observed that the elections should be conducted without disturbing the manufacturing process and thereby the Industrial Court has taken care

that because of the elections the employers

shall not be put to any loss either in production or otherwise. Under the Trade Unions Act holding of an election is a must. Not only that but under the provisions of M.R.T.U.and P.U.L.P.Act, 1971 also holding of elections and office bearers is necessary. It is to be noted that under the Industrial Disputes Act the works committee is required to be constituted by election from amongst the office bearers. Under Rule 52 of the Industrial Disputes (Bombay) Rules obligation has been placed on the employer to hold elections and to provide the facility of holding elections and, therefore, it is statutory duty of the employer. Breach of a statutory duty is an unfair labour practice as held in the case of S.G.Chemicals and Dyes Trading Employees' Union Vs.S.G.Chemicals and Dyes Trading Limited and another reported in (1986) 2 S.C.C.624. Thus prima facie the action of the employer in this case is an unfair labour practice under item 9 of Schedule IV. The Industrial Court and the learned Single Judge have rightly considered all these aspects and, therefore, have passed

the impugned orders. Under these circumstances, we also refrain from entertaining the L.P.A. against the interlocutory order. Hence, L.P.A. is rejected.

3. In view of rejection of the L.P.A. Civil application does not survive and hence rejected.

(Smt.NISHITA MHATRE J.) **(S.B.MHASE J.)**